SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3441-22

VILMA BARRETT,

Plaintiff-Appellant,

and

ALBERT BARRETT,
her spouse,

Plaintiff,

v.

HACKENSACK UNIVERSITY MEDICAL CENTER, a division of HACKENSACK MERIDIAN HEALTH HOSPITAL CORPORATION,

Defendant-Respondent.

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Argued May 13, 2024 – Decided June 13, 2024

Before Judges Gilson and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-0049-22.

Steven Howard Cohen argued the cause for appellant (Davis, Saperstein & Salomon, PC, attorneys; Paul Garfield and Albert C. Asphall, on the brief).

Douglas Fabian Ciolek argued the cause for respondent (Rosenberg, Jacobs, Heller & Fleming, PC, attorneys; Douglas F. Ciolek, of counsel and on the brief).

PER CURIAM

Vilma (plaintiff) and Albert Barrett appeal from the trial court's award of summary judgment to Hackensack University Medical Center (HUMC or defendant), alleging the trial court erroneously interpreted New Jersey's Workers' Compensation Act, N.J.S.A. 34:15-1 to -146 (the NJWCA), to preclude her personal injury claim. They contend plaintiff's injuries did not occur "in the course of" her employment, as required for compensation pursuant to the NJWCA. The motion evidence did not establish that Vilma's injuries occurred in the course of her employment. Therefore, we reverse the trial court's award of summary judgment, and remand for further proceedings.

I.

We glean the following facts from the record. Plaintiff is employed by HUMC as a Certified Nursing Assistant. At the time of her injuries, plaintiff regularly worked the overnight shift, which ended at 7:00 a.m. Plaintiff's son customarily dropped her off at HUMC prior to work and then picked her up the

next morning at the end of her shift. On the morning of May 31, 2021, plaintiff finished working at 7:00 a.m., clocked out, and met her son in HUMC's lobby, where her son complained of feeling pain and numbness. Plaintiff urged her son to park his car, which he did in HUMC's main garage, and they proceeded to the emergency room. Plaintiff accompanied her son at the emergency room and remained with him for his entire stay -- approximately three-and-a-half hours. At approximately 10:30 a.m., plaintiff's son was discharged. Plaintiff thereafter walked to her son's car in the garage, where she tripped on exposed metal on the floor and fell, fracturing her patella tendon and spraining her medial collateral ligament.

The record is not clear as to whether the trial court inquired into the status of a potential worker's compensation claim. However, after we requested supplemental briefing on the issue, HUMC supplied a certification stating that HUMC's "worker['s] compensation carrier, New Jersey Manufacturers, reviewed this matter and made a determination that it was not covered by New Jersey's worker['s] compensation laws."

It is undisputed plaintiff did not file a claim for worker's compensation benefits. Instead, plaintiff and Albert Barrett, her husband, filed a complaint against HUMC sounding in negligence and loss of consortium. After discovery,

HUMC moved for summary judgment, which the trial court granted. It held the NJWCA barred plaintiff from suing HUMC for injuries she sustained in HUMC's parking garage because plaintiff never left HUMC's premises after the conclusion of her shift. According to the trial court, plaintiff's proper remedy was to file a claim pursuant to the NJWCA. This appeal followed.

II.

We review summary judgment de novo. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). We "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Statewide Ins. Fund v. Star Ins. Co., 253 N.J. 119, 125 (2023) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). Summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged," thus entitling the movant to judgment as a matter of law. R. 4:46-2(c).

As the Supreme Court recently reaffirmed:

> When interpreting a statute, the Legislature's intent is the paramount goal. Courts ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to

> give sense to the legislation as a whole. Here, we interpret the [NJWCA], which is humane social legislation designed to place the cost of work-connected injury on the employer who may readily provide for it as an operating expense. Provisions of the [NJWCA] have always been construed and applied in light of its broad remedial objective.
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> [Keim v. Above All Termite & Pest Control, 256 N.J. 47, 55-56 (2023) (internal quotation marks and brackets omitted) (citations omitted).]

The NJWCA compensates employees only for "accident[s] arising out of and in the course of employment . . . ." N.J.S.A. 34:15-7. When interpreting the phrase "arising out of and in the course of employment," we look for both circumstances -- "arising out of" referring to causality, and "course of employment" referring to the accident's time, place, and circumstances in relation to an employee's duties. Zahner v. Pathmark Stores, Inc., 321 N.J. Super. 471, 477 (App. Div. 2003) (quoting Cannuscio v. Claridge Hotel & Casino, 319 N.J. Super. 342, 349 (App. Div. 1999)). Employment commences "when an employee arrives at the employer's place of employment to report for work and terminates when the employee leaves the employer's place of employment, excluding areas not under the control of the employer." Id. at 478 (quoting N.J.S.A. 34:15-36). In accordance with this "premises rule," we look

to (1) the location of the accident, and (2) whether the employer controlled the property on which the accident occurred. Ibid.

To arise "out of" employment, the accident must be of the kind that "might have been contemplated by a reasonable person when entering the employment, as incidental to [that employment]." Ibid. (alteration in original) (quoting Sparrow v. La Cachet, Inc., 305 N.J. Super. 301, 306 (App. Div. 1997)). Three categories of circumstances exist: "(1) risks 'distinctly associated' with the employment . . . ; (2) 'neutral' risks, such as an employee struck by lightning; and (3) risks that are 'personal' to the employee, such as a non-work-related heart attack." Id. at 479. Only the first two categories are compensable pursuant to the NJWCA. Ibid.

Here, there is no dispute plaintiff tripped and fell in HUMC's parking garage. The only dispute lies in whether the accident occurred "in the course of" her employment. In this regard, we find Zahner controlling and warranting reversal of the trial court's ruling.

The plaintiff in Zahner was not actively working for her employer at the time of her injuries. 321 N.J. Super. at 474-75. On her own time and after the conclusion of her shift, she remained in her employer's store to conduct food shopping. Id. at 474. While she performed this ~~unquestionably~~ personal errand,

she slipped and fell on the tile floor. Id. at 475. We affirmed the trial court and held that the plaintiff's "'personal proclivities' . . . gave rise to the harm she incurred" and hence did not "arise out of" the plaintiff's employment. Id. at 481.

Here, plaintiff finished her shift at 7:00 a.m. Rather than leave HUMC's premises, plaintiff remained at the hospital to stay with her son while he received treatment in the emergency room. Her decision to remain was purely personal, as the plaintiff in Zahner and the plaintiff in Mule v. N.J. Manufacturers Insurance Co., 356 N.J. Super. 389, 395 (App. Div. 2003), where the plaintiff was on his employer's premises for reasons "unrelated to his employment duties and served his personal interests exclusively."

We disagree with defendant's assertion that plaintiff's admission the accident occurred in the parking garage is determinative and precludes her personal injury suit. The location of the accident is not dispositive; the premises rule applies only to the first part of a court's inquiry regarding the NJWCA's application. Id. at 397; see Zahner, 321 N.J. Super. at 478.

Additionally, defendant maintains, in its supplemental brief, that although plaintiff believed she did not have a viable worker's compensation claim, plaintiff should have simultaneously filed a claim for worker's compensation with this lawsuit "so that the Division of Worker's Compensation [could]

exercise its primary jurisdiction to decide if the accident is compensable." After supplemental briefing, we learned HUMC submitted the claim to its workers' compensation carrier, which reviewed the matter and denied coverage. Nothing in the NJWCA precludes a trial court from determining coverage as both courts exercise concurrent jurisdiction to determine compensability. Est. of Kotsovska ex rel. Kotsovska v. Liebman, 221 N.J. 568, 587 (2015) (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 42.1 on R. 4:5-4 at 1414 (2014)).

Based on the record before us, and considering the facts in the light most favorable to plaintiff, there is no evidence establishing that plaintiff was performing any work-related task during her three-and-a-half hour wait for her son. Without evidence that plaintiff was acting in the course of her employment, the trial court erred in granting summary judgment and finding the NJWCA precluded her claims. Accordingly, we reverse and vacate the order granting summary judgment to HUMC.

Reversed and remanded. We do not retain jurisdiction.